IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

REVIEW PETITION NO.103 OF 2005
(Review of the order dated 8th October, 2002 passed
by this Hon'ble Court in Civil Application No.2067/2002
IN

WRIT PETITION NO.923 OF 2002

1. Smt.Padma Y. Jawale & anr. Petitioners
(orig.petitioners)

vs.

1. Administrators,
Sankalpa Co-operative Housing
Society Ltd. & anr. Opponents
(orig.respondents)

Mr.D.G.Khambatta as Amicus Curiae for the applicants.

Mr.K.P.Anilkumar for the respondent no.1.

Mr.M.H.Solkar, Assistant Government Pleader for the
respondent no.2.

CORAM : A.M. KHANWILKAR,J.

DATED : 9th September 2005

P.C.

Heard Mr.Khambatta, the learned counsel, who was appointed as Amicus Curiae to espouse the cause of the applicants.

2. This review application is filed against the order passed by me on 8.10.2002 in Writ Petition No.923/2002 with C.A.No.2067/2002. By the said order, the writ petition was disposed of with liberty to the applicants to take recourse to the statutory remedy of revision before the Revisional Authority, if so advised. The applicant instead of taking recourse to remedy of

revision has filed the present review petition. Two submissions have been raised before me. Firstly, that the order passed by the Divisional Joint Registrar dated 1.1.2001 which was the subject matter of challenge in the writ petition is without jurisdiction and if it is so, it was open to the applicants to directly approach this Court to remedy that mischief. It is then argued that the scope of remedy of revision is very limited as has been expounded in the decision of this Court in Balasaheb Kondiram Pawar & ors. v. State of Maharashtra & ors., reported in **1999(3) Mah.Law Journal 982,** for which reason the applicants ought not to have relegated to file revision application. The learned counsel has also placed reliance on the decision of the Apex Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & ors., **AIR 1999 SC 22** to contend that the order is without jurisdiction, remedy of writ petition is the appropriate remedy to be invoked before this Court. It is then argued that the concession given by the advocate as recorded in the order under review-that the applicants would take recourse to remedy of revision application- was without authority. It is submitted that in any case the said concession will not bind the applicants as there can be no estoppel against the wrong concession given by the advocate appearing for the party, cannot be the basis to non-suit the party. Reliance is placed on the decision of Apex Court in the case of Moran Mar Basselios

Catholicos & anr. v. Most Rev. Mar Poulose Athanasius

& ors., **A.I.R. 1954 S.C. 526 (para 38).**

3. In my opinion, assuming that the advocate had no authority to record concession of the applicants even so no interference is required in the review jurisdiction. This is so, because the remedy available to the applicants under Section 154 is a statutory remedy. The case on hand cannot be said to be an order passed by the Divisional Joint Registrar without jurisdiction as such. The argument of the applicants if at all is that the Divisional Joint Registrar could not have issued directions in exercise of powers under Section 146 (a) of the Maharashtra Cooperative Societies Act so as to accord permission to institute criminal offence against the applicants who were not the members of the society. That submission is in the nature of questioning the order being in excess of jurisdiction and not without jurisdiction as such. Viewed in this perspective, the remedy of revision which is the statutory remedy can be said to be effective and the mischief committed by the lower Authority can be corrected in such proceedings. The counsel for the applicants has rightly placed reliance on the decision of our High Court in Balasaheb Kondiram Pawar's case that the remedy of revision is very limited. Nevertheless the contention which the applicants proposes to raise before this Court can be conveniently addressed before the Revisional Authority

and such contention will have to be adjudicated by the Revisional Authority.

4. In my opinion, therefore, there is no reason to review the order in question. It will be open to the applicants to approach the Revisional Authority as expeditiously as possible and not later than two weeks from today, if so advised. Only in that contingency the respondents will not raise objection regarding the limitation as is recorded in the order under review. Besides, the Revisional Authority will not non-suit the applicants on the ground of delay as the applicants were pursuing remedy before this Court.

5. This application, therefore, is disposed off with the above observations. All questions to be raised in the Revision application on behalf of the parties are left open to be decided by the Revisional Authority in accordance with law.

6. The Court expresses word of appreciation for Mr.Khambatta, who has given able assistance to the Court as Amicus Curiae to espouse the cause of the applicants who were appearing in person.

(A.M. KHANWILKAR,J.)